In the United States Court of Federal Claims

No. 08-103 C
(Filed: February 27, 2008)

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PHILLIP MARK SHAFER, *
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Plaintiff, *
*
v. *
*
THE UNITED STATES, *
*
Defendant. *
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OPINION AND ORDER

Plaintiff filed a pro se complaint in this court on February 21, 2008, seeking damages related to a lease agreement between him and the National Park Service. Although defendant has not yet entered an appearance in this case, there is no need to await its response. Because it is clear that plaintiff currently has the same claims pending in another court, this court lacks jurisdiction pursuant to 28 U.S.C. § 1500 (2000). Therefore, the court must dismiss plaintiff's complaint.

I. BACKGROUND

A. Factual History Described in the Instant Complaint[1]

On May 1, 2000, plaintiff and his former partner entered into a twenty-year lease of the "Historic Burnside Property" with the United States, acting through the National Park Service of the United States Department of the Interior. Compl. ¶ 1; App. A; App. B-5. Pursuant to the terms of the lease, plaintiff was to make certain capital improvements to the property, and the

[1] Pro se complaints, "'however inartfully pleaded' are held 'to less stringent standards than formal pleadings drafted by lawyers.'" Hughes v. Rowe, 449 U.S. 5, 9 (1980) (citing Haines v. Kerner, 404 U.S. 519, 520 (1972)). At this stage of the proceedings, the court assumes that the allegations in the complaint are true and construes those allegations in plaintiff's favor. Henke v. United States, 60 F.3d 795, 797 (Fed. Cir. 1995). Thus, the court derives the facts in this section from the complaint ("Compl.") and the appendices attached to the complaint ("App."). The court also takes judicial notice, pursuant to Rule 201 of the Federal Rules of Evidence, of the docket in State v. Shafer, case number 21K05036040, in the Circuit Court for Washington County, Maryland ("Circuit Docket").

National Park Service would credit the costs of the approved improvements against plaintiff's rent payments. App. A. Soon after beginning restoration work on the property, plaintiff encountered a "level of deterioration" that "far exceeded the general scope" of what the parties contemplated when they entered into the lease. Compl. ¶ 3; App. B. To address these differing conditions, the parties entered into an "amended" lease in September 2003, which acknowledged the increased amount of funds that would be necessary to complete the restoration. Compl. ¶ 4. From May 2000 to the end of 2003, plaintiff expended a total sum of $196,650 for the restoration. Id. ¶ 5; App. C-1.

During the winter of 2003-2004, plaintiff's efforts to restore the property were halted with the discovery of lead paint and asbestos. Compl. ¶ 5. A "cease and desist" order on the restoration work was issued. Id. ¶ 5. Although plaintiff attempted to have the "cease and desist" order lifted, the National Park Service failed to respond to plaintiff's requests. Id. ¶¶ 6-7. Instead, the National Park Service informed plaintiff, via letter dated March 4, 2004, that he was in violation of several terms of the lease and the September 2003 agreement. Id. ¶ 7; App. D. The alleged violations included: (1) "numerous unauthorized animals on the property"; (2) failure to pay at least $4,345 in rent; (3) "unauthorized ground disturbance, landscaping, and the removal of approximately 109 trees"; (4) failure to "provide the Lessor with a[n] 'Historic Structure Preservation Guide' for each historic structure" on the property; and (5) failure to complete the agreed-upon work. App. D-1 to D-2. Subsequently, pursuant to an April 2004 letter, the National Park Service terminated the lease and directed plaintiff to vacate the property within forty-five days. App. E-1; App. G.

Plaintiff disputes that he was in violation of the lease agreement. Compl. ¶¶ 7-8, 11, 13, 21; App. E. He indicates that his expenditures of $196,650 for the restoration negated any rent that was due, Compl. ¶¶ 7, 21; that the National Park Service had directed plaintiff to remove the shrubs and trees at issue to restore an overgrown pasture, id. ¶ 11; App. E; that the National Park Service had approved the presence of farm animals on the property, id. ¶ 13; and that any further work was precluded by the "cease and desist" order, id. ¶¶ 8, 21. Thus, plaintiff did not vacate the property. See App. E; App. G.

In June 2005, plaintiff was charged with the "exploitation of a vulnerable adult" and a "theft-scheme" in excess of $500 in conjunction with his power of attorney over his grandmother's affairs. Compl. ¶ 15; Circuit Docket. Then, sometime "on or around November 10, 2005," while plaintiff was not present on the property,[2] the National Park Service removed plaintiff's personal belongings, including five vehicles, furniture, clothing, personal effects, heirlooms, a player piano, new stainless steel appliances, and business records, from the

[2] It does not appear that plaintiff was incarcerated pending trial, as bond had been posted. See Circuit Docket.

property.[3] Compl. ¶ 14; App. C-2. On November 15, 2005, plaintiff was tried before a judge on both aforementioned charges, and was found guilty on the "theft-scheme" charge. Compl. ¶ 15; Circuit Docket. Plaintiff was sentenced to a period of incarceration of fifteen years. Compl. ¶ 16; Circuit Docket. Plaintiff contends that he was unable to mount an adequate defense to the charges because the documents supporting his lawful actions had been seized by the National Park Service. Compl. ¶¶ 15-16. Plaintiff has attempted to reclaim from the National Park Service the seized business records, as well as the rest of his personal property, to no avail. Id. ¶¶ 16, 19; see also App. K (responses to plaintiff's Freedom of Information Act requests for the return of his business records). In the instant complaint, plaintiff appears to allege a breach of contract, a Fifth Amendment taking, and due process and equal protection violations. See Compl. ¶ 21. Then, as remedies, plaintiff seeks $194,780 in compensatory damages, $584,340 in punitive damages, declaratory relief, a mechanic's lien on the property pending the outcome of this lawsuit, the return of the vehicles and other personal property (or, alternatively, the sum of $45,650), the return of "all records, documents, invoices, contracts and photographs," the appointment of counsel, and "such other and further relief as the nature of the case may require." Compl. Wherefore.

B. Plaintiff's Prior Lawsuit in Federal District Court[4]

On January 17, 2007, prior to filing the instant complaint, plaintiff filed a complaint in the United States District Court for the District of Maryland ("district court"), naming several officials of the United States Department of the Interior, the National Park Service, and the United States Park Police as defendants. In that complaint, plaintiff alleged that he entered into a twenty-year contract with the National Park Service, committed "over $115,000 in the restoration, maintenance and preservation" of the property, received a "cease and desist" order due to the discovery of lead paint, and was repeatedly rebuffed by the National Park Service in his attempts to set aside the "cease and desist" order and continue his restoration work. Dist. Compl. N-2. Plaintiff also alleged that the National Park Service sought to terminate the contract for plaintiff's alleged failure to maintain homeowner's insurance, failure to pay rent and taxes, keeping of farm animals on the property, and removal of certain trees and shrubs from the property. Id. at N-2 to N-3. Plaintiff further alleged that the National Park Service incorrectly claimed that plaintiff had abandoned the property and thus improperly removed all of his personal belongings from the property. Id. Plaintiff sought the following relief in the district court: (1) $1,000,000 for intentional infliction of emotional distress; (2) $1,000,000 for

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[3] However, in a later dated December 1, 2005, the National Park Service indicated that it first learned that plaintiff "had finally vacated the property" on November 25, 2005, and indicated that it "is having the personal property left at the Burnside Property removed." App. G.

[4] The court takes judicial notice of the docket in Shafer v. Brandt, case number 8:07-cv-00219-PJM, in the United States District Court for the District of Maryland, and derives the facts in this section from the complaint ("Dist. Compl.") and December 19, 2007 memorandum opinion ("Mem. Op.") in that case.

constitutional violations; (3) $521,880 in "actual related damages"; (4) the return of the property to his family; (5) the sum of $22,000 to compensate for the seized vehicles and personal property; and (6) an order for the return or production of all "illegally seized" records, letters, records, pictures, and notices relating to the property. Id. at 3.[5]

Defendants filed a motion to dismiss or for summary judgment with the district court on August 15, 2007. The district court ruled on defendants' motion on December 19, 2007. Mem. Op. 1-8. In that opinion, the district court recited plaintiff's factual allegations, id. at 1-2, and then supplemented the factual record by citing exhibits supplied by defendants, id. at 2-3.[6] The district court then analyzed plaintiff's complaint for the purposes of defendants' summary judgment motion as alleging "a deprivation of property without due process of law,"[7] negligence under the Federal Tort Claims Act, violation of the Racketeer Influenced and Corrupt Organizations Act, equal protection claims arising under 42 U.S.C. §§ 1985-1986, "lead paint violations, HUD violations, torts for breach of contract, torts for breach of covenants (sic) of good faith/fair dealings, civil fraud and conspiracy, harassment, intimidation, extortion, torturous (sic) interference with contractual obligations, intentional infliction of emotional distress, landlord and tenant violations, constitutional violations[,] and other unspecified violations." Id. at 5-8. The district court concluded that plaintiff could not establish any of his claims and thus granted summary judgment for defendants. Id. Plaintiff appealed the district court's ruling on January 4, 2008, and the appeal is currently pending before the United States Court of Appeals

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[5] In the scanned version of the complaint in the district court docket, the pages are not consecutively numbered. The page containing the relief sought by plaintiff appears directly after page N-3, but is page "3" of a form complaint and is the seventh scanned page.

[6] Of particular note from the additional facts provided by the district court was the condition in which the National Park Service found the property in late 2005:

> Upon inspection, it was discovered that the house was left in a state of squalor, with piles of trash in every room. The smell of rotting food, feces, solvents and filth permeated the house, the jawbone of a dead animal was found in the basement and a dead goat was found in a building near the barn. The National Park Service removed the personal property from the premises at a cost of $23,000.

Mem. Op. 3 (citation omitted).

[7] It is worth noting that with respect to plaintiff's claim of deprivation of property without due process of law, the district court found: "Despite the notices sent to Plaintiff, he took no action to retrieve his property. Moreover, because the property was filthy when Defendant took repossession, the decision to dispose of the property was reasonable. . . . No further accommodation to protect Plaintiff's property rights was required given the circumstances of this case." Mem. Op. 5.

for the Fourth Circuit ("Fourth Circuit"). See Shafer v. Brandt, No. 8:07-cv-00219-PJM, appeal docketed, No. 08-6126 (4th Cir. Jan. 28, 2008).

II. DISCUSSION

A. Subject Matter Jurisdiction

Whether the court has jurisdiction to decide the merits of a case is a threshold matter. See Steel Co. v. Citizens for a Better Env't, 523 U.S. 83, 94-95 (1998). "Without jurisdiction the court cannot proceed at all in any cause. Jurisdiction is power to declare the law, and when it ceases to exist, the only function remaining to the court is that of announcing the fact and dismissing the cause." Ex parte McCardle, 74 U.S. (7 Wall.) 506, 514 (1868). The parties or the court sua sponte may challenge the court's subject matter jurisdiction at any time. Arbaugh v. Y & H Corp., 546 U.S. 500, 506 (2006).

The ability of the United Stated Court of Federal Claims ("Court of Federal Claims") to entertain suits against the United States is limited. "The United States, as sovereign, is immune from suit save as it consents to be sued." United States v. Sherwood, 312 U.S. 584, 586 (1941). The waiver of immunity "cannot be implied but must be unequivocally expressed." United States v. King, 395 U.S. 1, 4 (1969). The Tucker Act, the principal statute governing the jurisdiction of this court, provides that the Court of Federal Claims has jurisdiction over claims against the United States that are founded upon the United States Constitution, a federal statute or regulation, or an express or implied contract with the United States, and that do not sound in tort. 28 U.S.C. § 1491(a)(1) (2000). The Tucker Act is merely a jurisdictional statute and "does not create any substantive right enforceable against the United States for money damages." United States v. Testan, 424 U.S. 392, 398 (1976). Instead, the substantive right must appear in another source of law, such as a "money-mandating constitutional provision, statute or regulation

that has been violated, or an express or implied contract with the United States."[8] Loveladies Harbor, Inc. v. United States, 27 F.3d 1545, 1554 (Fed. Cir. 1994).

Further, the Court of Federal Claims lacks jurisdiction over claims that are already pending in another court. The relevant statute, 28 U.S.C. § 1500, provides:

> The United States Court of Federal Claims shall not have jurisdiction of any claim for or in respect to which the plaintiff or his assignee has pending in any other court any suit or process against the United States or any person who, at the time when the cause of action alleged in such suit or process arose, was, in respect thereto, acting or professing to act, directly or indirectly under the authority of the United States.

28 U.S.C. § 1500. This statute "was intended to protect the United States from having to defend two lawsuits over the same matter simultaneously." UNR Indus., Inc. v. United States, 962 F.2d 1013, 1019 (Fed. Cir. 1992).

B. The Claims Raised in Plaintiff's Instant Complaint Are the Same Claims Within the Meaning of 28 U.S.C. § 1500 as the Claims Presented in the District Court Complaint

The United States Court of Appeals for the Federal Circuit ("Federal Circuit") has considered the definition of "claim," as used in 28 U.S.C. § 1500: "For the Court of Federal Claims to be precluded from hearing a claim under § 1500, the claim pending in another court

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[8] Thus, while the Court of Federal Claims possesses jurisdiction to award damages for breach of contract, it cannot award punitive damages, declaratory relief not associated with bid protest actions, or injunctive relief. See Bowen v. Massachusetts, 487 U.S. 879, 905 & n.40 (1988) ("The Claims Court does not have the general equitable powers of a district court to grant prospective relief. Indeed, we have stated categorically that 'the Court of Claims has no power to grant equitable relief.'" (citation omitted)); Greene v. United States, 65 Fed. Cl. 375, 379 (2005) ("It is well-established that this Court lacks authority to grant punitive damages." (citing Garner v. United States, 230 Ct. Cl. 941, 943 (1982); Vincin v. United States, 468 F.2d 930, 932 (1972))). Further, this court lacks jurisdiction over claims arising under the due process and equal protection clauses of the Fifth and Fourteenth Amendments because neither clause is money-mandating. LeBlanc v. United States, 50 F.3d 1025, 1028 (Fed. Cir. 1995) ("[T]he Due Process Clauses of the Fifth and Fourteenth Amendments [and] the Equal Protection Clause of the Fourteenth Amendment . . . [are not] a sufficient basis for jurisdiction because they do not mandate payment of money by the government."); Mullenberg v. United States, 857 F.2d 770, 773 (Fed. Cir. 1988) (holding that the due process and equal protection clauses of the Fifth and Fourteenth Amendments "do not trigger Tucker Act jurisdiction in the courts"); see also Crocker v. United States, 125 F.3d 1475, 1476 (Fed. Cir. 1997) ("The Court of Federal Claims . . . does not have jurisdiction to hear . . . due process or seizure claims under the Fifth Amendment to the United States Constitution.").

must arise from the same operative facts, and must seek the same relief." Loveladies Harbor, Inc., 27 F.3d at 1551; see also Keene Corp. v. United States, 508 U.S. 200, 213 (1993) ("Congress did not intend the statute to be rendered useless by a narrow concept of [claim] identity providing a correspondingly liberal opportunity to maintain two suits arising from the same factual foundation."). In arriving at this conclusion, the Federal Circuit drew from the holdings in several prior decisions.

First, in Johns-Manville Corp. v. United States, the Federal Circuit held that "the term 'claim' in 28 U.S.C. § 1500 [is] defined by the operative facts alleged, not the legal theories raised." 855 F.2d 1556, 1563 (Fed. Cir. 1988). Thus, alleging an alternate legal theory does not create a new claim. Next, in Casman v. United States, the Court of Claims determined that plaintiff's suit before the district court sought completely different relief from his suit before the Court of Claims: plaintiff sought equitable relief (reinstatement) in the district court and money damages (back pay) in the Court of Claims. 135 Ct. Cl. 647 (1956). Thus, claims are distinct if a plaintiff seeks different forms of relief. Finally, in Keene Corp., the United States Supreme Court ("Supreme Court") clarified that only "some overlap" in the relief requested was necessary to satisfy the "same relief" analysis. 508 U.S. at 212-13. Therefore, to maintain distinct claims, a plaintiff must seek mutually exclusive forms of relief.

As noted above, in the district court, plaintiff alleges a number of claims based on a multitude of legal theories, all of which arise from the performance of the terms of the lease and the seizure of plaintiff's property. Similarly, in the Court of Federal Claims, plaintiff alleges claims for breach of contract, Fifth Amendment taking, and due process and equal protection violations arising from the performance of the terms of the lease and the seizure of plaintiff's property. Despite any differences in the legal theories advanced by plaintiff in the two courts, all of plaintiff's claims are based on the same operative facts.

Additionally, in the district court, plaintiff seeks compensation for the work he already performed but was not paid for, as well as the value of the personal property seized by the National Park Service. Dist. Compl. 3. Plaintiff seeks that same monetary compensation in the Court of Federal Claims. Compl. Wherefore. Since plaintiff seeks the same money damages in both courts, both complaints request the same relief. Accordingly, for the purposes of 28 U.S.C. § 1500, the claims now before this court are the same as those on appeal from the district court to the Fourth Circuit.

C. Plaintiff's Claims Were Pending Before the Fourth Circuit When Plaintiff Filed the Instant Complaint

The Supreme Court held in Keene Corp. that 28 U.S.C. § 1500 bars jurisdiction in the Court of Federal Claims "over the claim of a plaintiff who, upon filing, has an action pending in any other court 'for or in respect to' the same claim." 508 U.S. at 209. Thus, "[t]he question of whether another claim is 'pending' for purposes of § 1500 is determined at the time at which the suit in the Court of Federal Claims is filed . . . ." Loveladies Harbor, Inc., 27 F.3d at 1548.

According to the Federal Circuit, the term "pending," as used in 28 U.S.C. § 1500, is unambiguous and thus is not susceptible to interpretation:

> The language of that provision is so clear and its meaning so plain that no difficulty attends its construction in this case. Adherence to its terms leads to nothing impossible or plainly unreasonable. We are therefore bound by the words employed and are not at liberty to conjure up conditions to raise doubts in order that resort may be had to construction. It is elementary that, where no ambiguity exists, there is no room for construction. Inconvenience or hardships, if any, that result from following the statute as written, must be relieved by legislation. . . . Construction may not be substituted for legislation.

Johns-Manville Corp., 855 F.2d at 1567 (quoting United States v. Mo. Pac. R.R. Co., 278 U.S. 269, 277-78 (1929)); see also Young v. United States, 60 Fed. Cl. 418, 424 n.9 (2004) (describing the plain meaning of "pending").

As explained above, the claims filed in the district court and, subsequently, in the Court of Federal Claims, are identical within the meaning of the statute. Thus, because plaintiff's appeal of the district court's adverse ruling is currently before the Fourth Circuit, the same claims were "pending" in the Fourth Circuit at the time plaintiff filed the instant complaint. Accordingly, the court must dismiss plaintiff's complaint pursuant to 28 U.S.C. § 1500.

III. CONCLUSION

Plaintiff's Motion for Leave to Proceed In Forma Pauperis is **GRANTED**. However, plaintiff's complaint is **DISMISSED** pursuant to 28 U.S.C. § 1500 for lack of subject matter jurisdiction. The Clerk is directed to enter judgment in accordance with the court's decision.

In addition to providing a copy of this decision to plaintiff and the United States Department of Justice, as is the normal course, the Clerk is directed to mail a courtesy copy of this decision to the following individual: Alex S. Gordon, Esq., Assistant United States Attorney, 36 South Charles Street, Fourth Floor, Baltimore, MD 21201-2692.

IT IS SO ORDERED.

MARGARET M. SWEENEY
Judge